IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

CWP No. 162 of 2004.

Reserved on : 2-01-2007.

Date of Decision: 8. 01. 2007.

Sunita Gupta. Petitioner.

Versus

Union of India and others. Respondents.

Coram

Hon'ble Mr. Justice Deepak Gupta, J
Hon'ble Mr. Justice S. S. Thakur , J.

Whether approved for reporting[1]?

For the petitioner : Mr. H. K. Paul, Advocate.

For the respondents 1 to 4: Mr. Ashok Sharma, Advocate.

For the respondents 6 & 7: Mr. M. S. Chandel, Advocate General, with Mr. J.S. Guleria, Law Officer.

PER SURINDER SINGH , J.

The petitioner has filed the present writ petition under Articles 226 and 227 of the Constitution of India, precisely for seeking writ direction against the respondents restraining them to recover a sum of Rs. 7, 26, 618/- from her vide letter dated 25-2-2003 (Annexure-P7) sent by the respondent no.4 followed by letter dated 5-9-2003 (Annexure-P5) issued by the respondent No.7 to the petitioner and also for quashing the recovery proceedings against her.

[1] Whether reporters of the Local papers are allowed to see the judgment?

As a matter of fact, the petitioner was a Postal Assistant in the Head Office, Solan from where she was transferred to Parwanoo in District Solan, H.P. Both these offices are under the Superintendent of Post offices, Solan Division (Respondent No.4). While working in Sub Post Office, Parwanoo, the respondent No.4 placed here under suspension and issued Memos Annexure P1 and P2, proposing to initiate inquiry against her, under Rule 14 of the C.C.S. (Classification, Control and Appeal) Rules, 1965 for allegedly defalcating the telephone revenue collections, in Government accounts, collected on various dates while her posting at the aforesaid places and failed to maintain hand to hand receipt book which was in contravention of Rule 4 (1), 195 (b) and 198 of P&T Financial Hand Book Volume 1 (General), Rule 26 of Postal Manual VI Part I and the Conduct Rules. Thus, there has been a loss of the Government revenue to the extent of Rs. 7, 78, 703/- relating to Head Post Office, Solan and Rs. 37, 950/- relating to Post office Parwanoo. An FIR No. 118 of 2000, was also registered on 1.10.2000 in Police Station Parwanoo and another FIR No. 174 of 2000 dated 9.9.2000 in Police Station, Solan, which was later transferred to CBI (Chandigarh Branch) and after completing the investigation they filed the charge-sheet in the Court against the Petitioner and also co-accused Maya Ram, Accounts Officer of Telephones and one Shri R.K.Sood, Assistant Post Master, Solan. The charge-sheet filed by the CBI is Annexure-P3. The petitioner had submitted representation to stay the disciplinary proceedings in view of pendency of criminal case in the Court. Her representation did not yield any favourable

response, as such, the petitioner had filed a petition under Section 19 of the Administrative Tribunals Act, 1986 before Central Administrative Tribunal Chandigarh Bench. Learned Tribunal, inter alia, directed the respondents to take a decision on her representation. On this, the respondent no.4 withdrew the Memo dated 15-1-2001 Annexure-P1 vide letter dated 11-1-2002 Annexure-P4. However, the disciplinary proceedings continued against the Petitioner in respect of another charge-sheet issued to her vide Memorandum dated 1-5-2001, Annexure-P2. Consequent to the Inquiry Proceedings, the petitioner was dismissed from service. Even her appeal was dismissed.

The petitioner has denied alleged misconduct. However, the balance recovery is being affected pursuant to notice Annexure-P5 which perse says about the recovery of loan which was never taken by her. According to the petitioner, when she had put in appearance before the Recovery Tehsildar, (Respondent No.7), even he could not satisfactorily reply, as to how the said amount was being recovered from her. On applying for the copy of the order, vide Annexure-P6, she was informed by the office of the Deputy Commissioner that the desired copy could not be supplied, thereafter, the petitioner filed C.W.P. No.931 of 2003 wherein the Deputy Commissioner, Solan had filed the reply and took the objection of non-joinder of necessary parties, i.e, Postal authorities, as the petitioner was an employee of the Postal Department and had embezzled the amount to the above extent out of which Rs. 90,000/- was deposited by her and the balance of Rs. 7, 26, 618/- was yet to be recovered from her, for which, a

requisition was sent by the Postal Department to recover the same as arrears of Land Revenue under the provisions of “Public Accountants’ Default Act, 1850” vide letter Annexure-P7 aforesaid. On this objection, the writ petition was dismissed vide order Annexure-P8 with liberty reserved to the petitioner to file the appropriate petition afresh. That is how the petitioner is before us.

Now the petitioner, after impleading the necessary parties, has assailed the recovery notice Annexure-P5 issued to the petitioner, by the respondent no.7 being wrong, illegal and arbitrary. The main grouse of the petitioner is that she did not owe any amount to the respondents and that she did not embezzle any amount as alleged. According to her, the Telecom Department had never raised any demand with the respondent No.4 or the Postal Department about any misappropriation or shortage in connection with telephone bills. She had in fact deposited the amount of Rs. 90,000/- under duress and no details of the telephone bills and numbers were ever supplied to her. Thus, sought the relief, aforesaid.

The respondents have filed replies. The gravamen of the reply filed by the respondents that it is within their authority to recover the amount in reference as the Postal Department had suffered a huge loss of Rs. 8, 16, 618/- of the telephone revenue collection by the petitioner as per details in Anexure-R1 to R3. The petitioner only paid Rs. 90,000/- which was accounted for but she never responded to the letters sent by the Department to pay the balance amount of Rs. 7, 26, 618/- and there was no option other than to approach the respondent No.6 Collector, for the recovery

of balance as arrears of land revenue. Further, according to them, coercive methods were never used to deposit the amount of rupees 90,000/- as alleged. It is also admitted by the respondent No.4 that they have taken the steps to recover the amount from the petitioner which she failed to deposit. According to the respondents, they were fully competent to recover the amount under the “Public Accountants’ Default Act, 1850”. Thus prayed for dismissal of the petition.

Arguments of learned counsel for the parties were heard and we have also examined the records.

Precisely, the recovery proceedings have been initiated at the instance of respondent No.4 under the Public Accounts Default Act 1850, hereinafter to be referred as “the Act”. Section 3 of the Act defines the “Public Accountants” reads as follows:

> “3. “Public accountant” defined.- For the purposes of sections 1 and 2 of this Act, the expression “public accountant” means any person who as Official Assignee or Trustee, or as sarbarahkar, is entrusted with the receipt, custody or control of any moneys or securities for money, or the management of any lands belonging to any other person or persons, and for the purposes of Sections 4 and 5 of this Act the expression shall also include any person who, by reason of any office held by him in the service of the Central Government or the Government or the Government of a State is

> entrusted with the receipt, custody or control of any moneys or securities for money, for the management of any lands belonging to such Government".

Whereas, Section 4 of the Act provides that the person or persons at the Head of the office to which any "Public Accountant" belongs may proceed against any such "public accountants" and his sureties for any loss or defalcation in his accounts, as if the amount thereof were an arrear of land-revenue due to Government. For that matter, Section 5 of the Act, has a wider scope which inter alia, makes all the existing regulations and acts in force for the recovery of arrears of land-revenue due to Government,

In view of the aforesaid provisions, we are of the considered view that Section 4 is fully applicable to the petitioner and for any defalcation, recovery can be affected from her as arrears of land revenue. But we are also very clear on the point that before the recovery proceedings could be initiated, it must be determined as to what is the "amount due" which is required to be recovered from the defaulter. There cannot be any determination of the amount without a notice to the defaulter though the Act, aforesaid, does not expressly provide for any opportunity being given to the alleged defaulter to explain as to whether any amount is due or not. The loss or defalcation in the accounts of the petitioner is required to be determined by the competent authority. Recovery of an amount from an employee on account of loss caused by his/her negligence to the Employer

is a minor penalty. The procedure to be followed in such cases is provided under Rule 16 of the CCS (CCA) Rules. However, the CCS (CCA) Rules do not provide for the mode of recovery. Therefore, in our view, keeping in view the nature of the allegations against the petitioner, it is imperative that the Competent Authority must follow the rules of natural justice and give adequate opportunity of hearing to the petitioner before determining the “amount due”. The rules of “natural justice” and the principles of “Audi altrem partem” are enshrined in our Constitution and form the basis of any decision making process which affects the right of any party. Further, the words “land revenue due” implies that there may be a lis between the parties and both parties are required to be heard before final conclusion is arrived at by the competent authority. Mere claim of the Department without its determination cannot be recovered as arrears of land revenue, the said amount must first be determined in accordance with law. The letter dated 25-2-2003 Annexure-P7, does not determine the rights of the parties or the amount due from the Petitioner to the Department but is only an intimation to the Tehsildar (Recovery through the Collector that the said amount be realized in accordance with law. As already held above, its determination is required to be done after giving a reasonable opportunity of being heard to the defaulter or affected party by the competent authority. After its determination it can be recovered as the arrears of land revenue to the Government.

In the instant case, as has been seen by us, the respondents No.1 to 4 or any other competent authority obviously

has not determined the amount to be recovered as a land revenue due to the Government and no opportunity of hearing was given to the petitioner. As such, in our opinion, the recovery proceedings initiated by the Collector against the petitioner through Tehsildar Recovery, pursuant to notice Annexure-P4 are held to be wrong and illegal as opposed to law and the principle of natural justice as stated above and is thus set aside.

Consequently, the petition is allowed and the respondents No.1 to 4 are directed to proceed in the matter afresh, after adjudicating by a competent authority the amount which is due against the petitioner, and if the amount due is not paid, it could be recovered as arrears of land revenue as per the provisions of Section 4 of the Act. Needless to say that the competent authority shall afford an opportunity to the petitioner in the process of determination of the amount due.

The matter is accordingly disposed of with no order as to costs.

CMP No. 319 of 2004.

No order in view of the disposal of the writ petition. The CMP is accordingly disposed of.

(Deepak Gupta), J.

(Surinder Singh), J.

January 8 .01.2007.
(BM)